

## Dicamba on trial: Monsanto officials testified dicamba may drift, but not enough to harm crops

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Johnathan Hettinger/Midwest Center for Investigative Reporting

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CAPE GIRARDEAU, Mo - If farmers follow the label, small amounts of dicamba may move off of the crops where they are applied, but there is “no way” that movement could hurt neighboring crops, according to video testimony from Monsanto officials in federal court on Friday.

The testimony wrapped up the first week of a trial in a civil lawsuit filed by Bader Farms, the largest peach farm in Missouri, against BASF and Bayer, which bought Monsanto in 2018.

Bader Farms alleges that drift from the herbicide dicamba led to its 1,000-acre peach farm no longer being sustainable. Bader also alleges the companies released their dicamba-related products knowing they would harm other crops.

BASF and Bayer deny the allegations, blaming the crop damage on farmers making illegal applications, weather events, disease and other issues. The companies are defending themselves in court, and the trial is expected to last at least two weeks.

The lawsuit is the first to go to trial of many lawsuits filed by farmers over the damage.

In 2017, the first year all of the company's dicamba-products were on the market, thousands of farmers alleged damage to more than 3.6 million acres of soybeans and other crops across the Midwest and South.

Farmers complained about symptoms such as leaf cupping, leaf curling and epinasty, or stem curling.

Yet Thomas Orr, global regulatory affairs manager at Bayer and former off-target movement assessment lead at Monsanto, said in video testimony that those symptoms don't necessarily mean the crops' survival, growth and reproduction is harmed.

"That's not an indication of an adverse effects by itself," Orr said of leaf cupping, the most common complaint among farmers.

Dr. Tina Bhakta, global chemistry expansion lead at Bayer, said Friday in a video testimony that while small amounts of Monsanto's version of dicamba could move to other plants, it would not be enough weed killer to harm their yields.

When asked if dicamba drifting onto a single crop multiple times in a season would have a yield impact, Bhakta said she didn't know.

"I don't think I'm in a position to answer that question," said Bhakta, who oversaw the U.S. Environmental Protection Agency's approval of Monsanto's new dicamba-based weed killer.

## Get the scoop on dicamba

Bayer and BASF are defending themselves against charges that they intentionally caused "an ecological disaster" in order to increase their profits on dicamba-related products.

The judge has imposed a gag order  
The exhibits are sealed

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## **Rise of dicamba issues**

The use of dicamba increased exponentially, starting in 2015 after Monsanto released new genetically engineered cotton seeds designed to withstand being sprayed by dicamba. The company launched dicamba-tolerant soybeans in 2016.

With the proliferation of weeds that were developing resistance to glyphosate, the most popular weed killer in the United States, the new trait meant dicamba, a volatile herbicide discovered in the 1950s, could be sprayed over-the-top of those crops. Monsanto and BASF also invented new versions of dicamba that were touted to be less volatile.

But the U.S. Environmental Protection Agency did not approve those new versions -- Monsanto's Xtendimax with VaporGrip and BASF's Engenia -- for the 2015 and 2016 growing seasons, and many farmers allegedly illegally sprayed older versions of dicamba on their crops.

Bill Bader, owner of Bader Farms, and hundreds of other farmers alleged the spray damaged their crops. In the lawsuit, Bader alleges that Monsanto and BASF, which makes the older versions of dicamba, are responsible for creating the situation that led to that damage.

Bader's attorneys' laid out their case this week, calling company witnesses, like Dr. Boyd Carey, regional agronomy lead at Bayer, who testified that: Monsanto executives chose to release the dicamba-tolerant seeds knowing there was a risk that some farmers would illegally spray dicamba; Monsanto executives ordered employees not to investigate any drift complaints in 2015 and 2016; and Monsanto executives declared that they would not settle any drift complaints.

"If a farmer didn't make an illegal application, there wouldn't be any problem," Carey said.

Knowing federal regulators were paying attention to the herbicide's tendency to move into other areas, Monsanto executives blocked that type of testing by university academics and even Monsanto employees looking to inform farmer recommendations, Bhakta testified.

When the new dicamba was launched in 2017, Carey also testified that the company anticipated thousands of drift complaints, despite the fact that nationwide from 2010-2014, farmers never filed more than 40 dicamba drift complaints.

More than 3,000 complaints came in to Monsanto's hotline, according to documents and testimony presented in court.

Despite those complaints, Kim Magin, director of industry affairs for Monsanto, testified Tuesday that the roll-out was a "success."

## **Monsanto's testing, Bader's call with Carey**

So far, Monsanto's defense has focused on the extensive steps the company has taken to educate farmers about dicamba. In 2015 and 2016, the company put a pink sticker on every bag of seed, telling farmers it was illegal to apply dicamba.

Jan Miller, the lead attorney for Monsanto, asked Carey to go through a list of everything Monsanto did to inform customers that spraying would be illegal, including notification at training meetings, letters to purchasers and statements in the media. One Asgrow presentation said it was illegal four different times on the same slide.

In its research on volatility, Monsanto did everything required of it by the EPA, even though that did not include any tests over soybeans, Bhakta testified. She said she considers Xtendimax safe.

"The EPA does, then yes (I do)," Bhakta said.

Carey also testified that he also talked to Bader, at the direction of Monsanto lawyers who were concerned he might file a lawsuit. Carey said Bader was the only non-customer he ever called about dicamba.

In those conversations, Bader told Carey he was injured by an aerial application of dicamba from Roundup, 2,4-D and Valor, another herbicide in April 2015, Carey said. Bader told him that the FDA found the presence of dicamba in his peaches, as well as glyphosate and 2,4-D, Carey testified.

He said 2,4-D was found at 11 times the concentration of dicamba and glyphosate was present at five times the concentration of dicamba.

Carey testified that April 11 would have been too early for any dicamba spraying, even illegal ones, over the top of Xtend crops.

In 2016, Bader told Carey that an older version of dicamba and glyphosate had injured his crops, including 25,000 trees, Carey testified. At that time, Bader said he knew dicamba was not his only problem and also told Carey he had hired a lawyer, Carey said.

Carey reminded the jury that Monsanto did not sell any dicamba products in 2016.

### **BASF's defense**

Representatives from BASF have spoken the least during the five days of the trial. Lawyers for BASF have not asked many questions in the video testimonies and only had a handful of questions for Carey, who was on the stand on Tuesday, Wednesday and Thursday.

So far, the focus has been on the lack of coordination between Monsanto and BASF and the competitor relationship between the companies. Bader has accused the companies of acting jointly to harm his farm.

Carey testified that BASF officials had no role in releasing the dicamba seeds prior to the commercialization of Engenia and Xtendimax.

The testimony from plaintiffs' video depositions of BASF officials is expected to start next week.

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